

APPENDIX 5

TAX EXPENDITURES FOR FURTHER REVIEW

	Other Revenue Issues	Statute Reference	Court Case	Explanation
	"Served to the public" Who is the public? Country club exemption	144.020.1(6)	JB Vending Co; Food Service Consultants; Shelter Mutual Insurance Co	The Supreme Court in JB Vending & Food Service Consultants ruled that food sales by a food service management company that operated cafeterias on business premises were subject to sales as meals served to the public. However, the Administrative Hearing Commission (AHC) subsequently ruled in Shelter Mutual Insurance Co that such sales were not subject to tax because Shelter owned and operated the cafeteria and thus did not serve the public. The Supreme Court has also applied this exemption to sales of food in private country clubs. A statutory change that would correct this problem and subject all sales in employee cafeterias to tax would be to delete the words "served to the public" and add "sold" to Section 144.020.1(6).
	Digital products-why not taxed?	144.010.1(10)		Section 144.010 defines a sale at retail as a transfer of title to tangible personal property for use or consumption for consideration. Specific taxable services are listed in 144.020. Because of the tangible requirement in Section 144.010, the Department of Revenue is unable to tax the transfer of property that was previously tangible but is now intangible, due to advances in computer technology and the digital information age. Computer software, books, and other publications that are transferred electronically in an intangible form are not subject to tax under the current law.
	Is distribution a taxable use?	144.610.1	May Department Stores	The Supreme Court ruled in May Department Stores that a Missouri company's purchases from an out-of-state printer of catalogs, which printer mailed directly to addresses supplied by company, including Missouri addresses, were not subject to use tax. This ruling encourages the purchase of such items from out-of-state rather than instate printers. If the term distribution were added to Section 144.610.1 as a taxable use, such transactions would be subject to tax.
	Fixture-incidence of tax?	144.010.1(10), 144.020, 144.021	Buchholz Mortuaries Inc	The AHC ruled in Buchholz Mortuaries that the sale of caskets and vaults as part of the funeral service was not the sale of tangible personal property. The AHC instead ruled that the caskets and vaults were fixtures to real property and as such the taxpayer owed tax on the purchase of these items but not on the marked up retail price. The taxpayer was therefore eligible for a large refund. This also presents potential tax avoidance when dealing with all kinds of contractors, such as nurseries and cabinetmakers. There are also numerous instances where items that might be considered tangible personal property, such as large

				appliances, are not subject to tax on sale because title transfers after installation.
	Canned/custom software	144.020	Tres Computer Systems	The Tres Computer Supreme Court case states that the sale of customized computer software is not subject to tax. However, the sale of canned software in tangible form is subject to tax. There is resulting confusion regarding what is the distinction between canned and customized software. Some states have solved this confusion by legislating that all computer software is subject to tax.
	True object test-mixed sales of service and tangible personal property		Tres Computer Service, Inc, Gammaitoni d/b/a Videotech, Sneary Architectural Illustration	When a sale involves both tangible personal property and nontaxable service, the sale of the tangible personal property is taxable and the service is exempt, if the sale of each is separate. When the sale of tangible personal property and a nontaxable service are inseparable, the wholesale price is taxable if the true object of the transaction is the transfer of tangible personal property, while none of the sale price is taxable if the true object of the transaction is the sale of nontaxable service. This presents a large number of gray area transactions that may result in under collected tax.
	Corn for Cars	144.025		Any tangible personal property traded in for another article of tangible personal property will qualify for a trade-in credit against the purchaser's sales and use tax liability. This has created the scenario for non-farmers to purchase grain tax exempt and then use the grain as a trade-in on a motor vehicle in order to avoid sales tax on the vehicle. However, this is not limited to just automobiles and can apply to any tangible personal property.
	Scope of the term plant used in sales tax exemption	144.030.2(5)	Any case involving new and expanded plant exemption including Southwestern Bell	What does the term "plant" mean in the exemption? Does it include a telephone system that has machinery and equipment on the customer's property? Is the entire telephone system from St. Louis to Kansas City or Kirksville to Springfield considered a plant? In addition, if the legislature could combine the exemptions for replacement machinery in Section 144.030.2(4) and Section 144.030.2(5) it may avoid inconsistencies on interpretation of the statutes by the courts.
	Use tax on materials purchased outside the state and incorporated by contractors into an item that the contractor then uses to fulfill its contractual obligation.	144.610	Morton Building/IBM	Use tax is imposed on an item purchased in another state but stored, used, or consumed in this state. When a contractor purchases materials in another state and uses them to make an item, e.g., a door, and then uses the door to fulfill a contract as in the cases Morton Building and IBM, no tax is due on the materials used to make the door. Since the door was not purchased but manufactured there is no purchase price for the door and no tax is imposed. Some in the department believe a tax should be imposed on the ingredient materials especially when the state where the item is manufactured has not imposed a tax on the materials used in the manufacturing.
	Leases and rentals in a place of amusement	144.020	Westwood	Section 144.020.1(2) provides that all fees paid in or to a place of amusement are subject to tax. Does this include fees paid for locker rentals, haircuts, or shoe shine services that otherwise are not taxable under the statutes?

				The Supreme Court in the Westwood case ruled that Section 144.020.1(2) and 144.020.1(8) are in conflict. The AHC has ruled in Tower Tee and Six Flags that it does not believe the legislature intended to forego tax revenues from places of amusement because a proprietor has decided to pay tax on its purchases of property that it rents or leases in a place of amusement.
	NOL from non-Missouri Corporations			Under current law, if a corporation's operations performed outside Missouri produce income, Missouri is prohibited from taxing that income. However, if those operations produce a loss, the corporation may use that non-Missouri loss to offset income that is produced in Missouri. The current situation permits non-Missouri corporations to be taxed less than Missouri corporations.
	Responsible Party-File and Pay	143.241	Jones v. DOR	Section 143.241 defines responsible party as a sales or withholding taxpayer who fails to "file and pay" delinquent tax returns. The ruling of the Jones case was that a taxpayer was only responsible if he failed to "file and pay," therefore, removing any liability if he filed the return and just failed to pay.
	Sale of Refundable Tax Credits	135.363		Certain tax credits, such as the low-income housing credit, authorizes credits to encourage development. The developers sell the credit at a reduced rate to help pay for the construction in order to raise capital for the investment. The purchaser of the credit will then redeem the credit for it's full value, therefore making money on the credit.
	Expenditures qualifying as tax credits and itemized deductions			Certain tax credits, such as the domestic violence tax credit and the maternity homes tax credit also qualify as part of a taxpayer's itemized deduction for contributions made to charitable organizations. The taxpayer "double dips" by getting the benefit of both the credit and the deduction for the same contribution.
	"Wholly Without" Exemption - Sales of tangible property after movement out of state	143.451.2(3)		Section 143.451.2(3) concerns transactions involving the sale of tangible property. Subdivisions (a) through (c) categorize sales according to the seller's shipping point and the purchaser's destination point; under subdivision (c) a sale is wholly without Missouri if the shipping point and destination point are both outside Missouri. Prior to a 1996 amendment, subdivision (d) provided that section 143.451.2(3) did not apply if the "tangible property was moved from within this state to another state prior to shipment to the purchaser." In that case the general "source of income" analysis usually meant that these sales were "partly within" Missouri. In the 1996 amendment, subdivision (d) was deleted. Now if tangible property is moved to an out-of-state warehouse, then sold to an out-of-state purchaser, the sale is simply wholly without Missouri under subdivision (c). The proposal is to reinstate subdivision (d) so that these sales would again be "partly within" Missouri.
	Reclassify tax credits from a reduction of liability to a tax payment			Change the statutes so that selected tax credits are considered a payment of a tax liability rather than a reduction of the tax liability. This could be done so as to be neutral to the taxpayer and increase revenue on the back of the federal government. This proposal is still being explored and developed by the Department of Revenue, Department of Economic Development, and the Office of Administration.

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	Expand affiliate nexus			Expand affiliate nexus so that companies selling in this state would be required to collect use tax if they have affiliation as a related party and use substantially the same name or trademark.